

ESTTA Tracking number: **ESTTA733921**

Filing date: **03/16/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92063109
Party	Defendant RNJ holdings Corp
Correspondence Address	RNJ HOLDINGS CORP 3050 NW 40TH ST MIAMI, FL 33142 UNITED STATES pbarchilla@gmail.com
Submission	Answer
Filer's Name	Juliet Alcoba
Filer's e-mail	jalcoba@miamipatents.com, alcoba@miamipatents.com
Signature	/Juliet Alcoba/
Date	03/16/2016
Attachments	Exhibit 1.pdf(303942 bytes) Exhibit 2.pdf(251395 bytes) Exhibit 3.pdf(624072 bytes) Exhibit 4.pdf(420326 bytes) Exhibit 5.pdf(2233273 bytes) Exhibit 6.pdf(1462445 bytes) Exhibit 7.pdf(1009272 bytes) FINAL Answer Cancellation proceeding for 92063109.pdf(334777 bytes)

EXHIBIT 1
DECLARATION
Vasquez

DECLARATION OF REINA S. VASQUEZ

I, REINA S. VASQUEZ, declare, pursuant to 28 USC §1746, under penalty of perjury, that the following statement is true and correct, and is based on my personal knowledge of the facts as stated herein:

1. I am the registered agent and President for RNJ Holdings, Corp.
2. The products being sold under the GEMBOS brand are compliant with the Food and Drug Administration laws and has been and remains compliant with United States Customs laws, and was specifically created for consumers in the United States.
3. Upon information and belief, Advanced Total Marketing Systems, Inc. or any of its predecessors in interest, have not distributed plantain chips under the ZAMBOS trademarks, identified by Reg. Nos. 2643142, 4811387, 4811390, 4811389, 4811388 in US Commerce.
4. I am a Honduran citizen and I am fluent in the Spanish language.
5. The term ZAMBOS is a racist and discriminatory term used to identify individuals of African and Amerindian descent.
6. There is a region in Honduras referred to as the Mosquito Zambos Coast which is recognized as having a large population of individuals having mixed African Amerindian descent.

By: 
Reina S. Vasquez

Date: 12/8/2015

EXHIBIT 2

YUMMIES FEDERAL REGISTRATION

Int. Cls.: 29, 30, 31 and 42

Prior U.S. Cls.: 46 and 101

United States Patent and Trademark Office

Reg. No. 1,458,548

Registered Sep. 22, 1987

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



YUMMIES CANDY COMPANY, INC. (MAINE
CORPORATION), DBA YUMMIES
P.O. BOX 566
ROUTE 1
KITTERY, ME 03904

FOR: ROASTED NUTS AND DRIED FRUITS
FOR CONSUMPTION ON AND OFF THE
PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 5-1-1986; IN COMMERCE
5-1-1986.

FOR: CANDY AND BAKED GOODS,
NAMESLY, COOKIES AND CRACKERS FOR
CONSUMPTION ON AND OFF THE PREMISES,
IN CLASS 30 (U.S. CL. 46).

FIRST USE 4-15-1986; IN COMMERCE
4-15-1986.

FOR: FRESH NUTS FOR CONSUMPTION ON
AND OFF THE PREMISES, IN CLASS 31 (U.S.
CL. 46).

FIRST USE 5-1-1986; IN COMMERCE
5-1-1986.

FOR: RETAIL CANDY AND GIFT STORE
SERVICES, IN CLASS 42 (U.S. CL. 101).

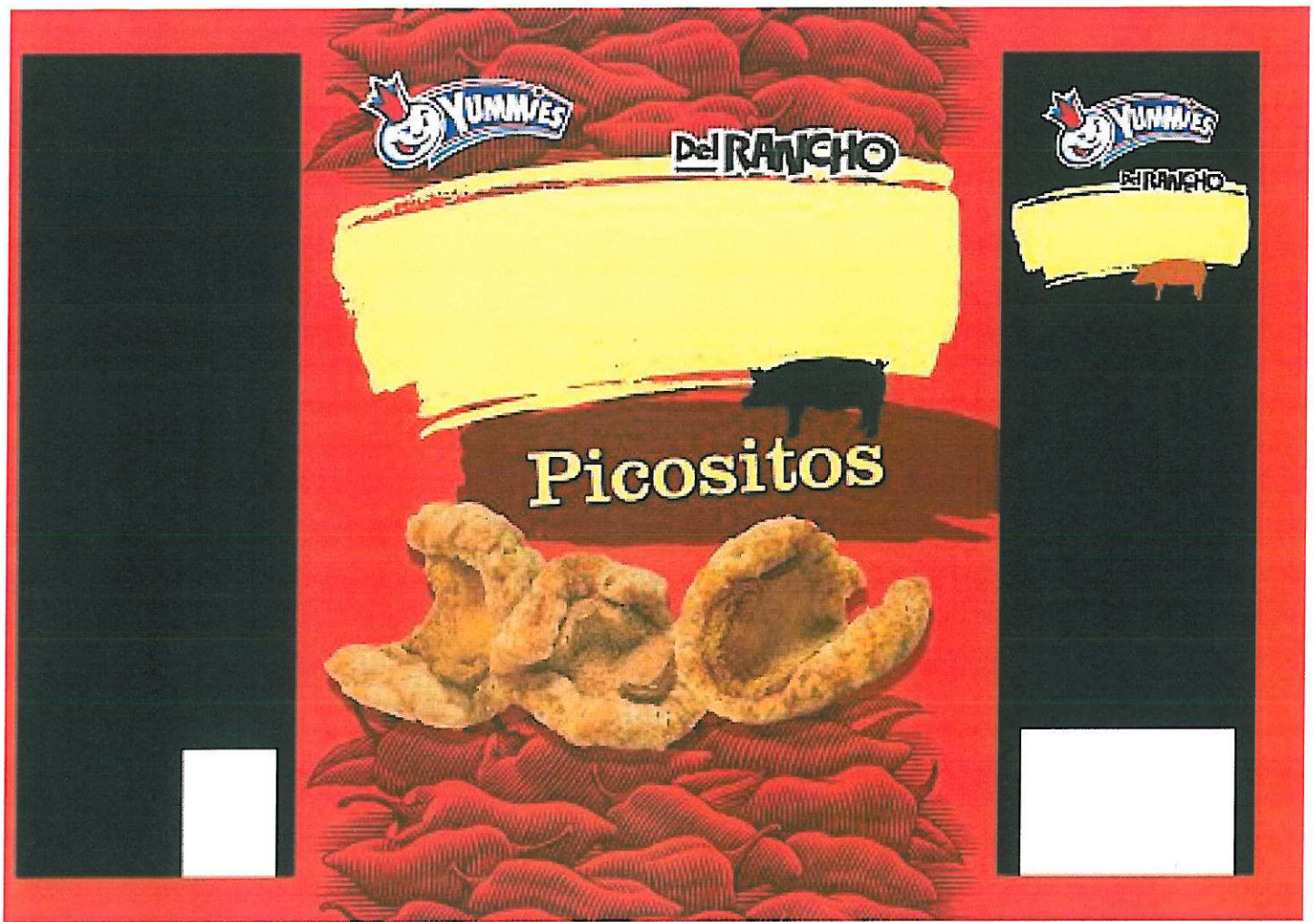
FIRST USE 3-11-1986; IN COMMERCE
5-1-1986.

SER. NO. 625,894, FILED 10-20-1986.

SALLY BETH BERGER, EXAMINING ATTOR-
NEY

EXHIBIT 3

DEL RANCHO FEDERAL REGISTRATION OWNED BY ANOTHER ENTITY



Application - PTD
86620091 issued office
action

Drawing submitted by
ATMS



PTO
Application - issued office action
86620056
Drawing submitted
by ATMS

EXHIBIT 4

ZAMBOS PRODUCT PACKAGING ALLEGING OWNERSHIP IN MARKS NOT OWNED BY ADVANCED TOTAL
MARKETING SYSTEMS



ZAMBOS PRODUCT PACKAGING ALLEGING OWNERSHIP IN MARKS NOT OWNED BY ADVANCED TOTAL
MARKETING SYSTEMS



EXHIBIT 5

DEFINITIONS OF ZAMBO/SAMBO

DEFINITIONS OF SALVAJE DE TROPICO



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zambo



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Video



Blog: Words at Play



My Faves

Dictionary

zambo

noun | zam·bo | \ˈzjām(,)bō, ˈsɪˌlɑm-ˌ\

plural

Definition of ZAMBO

: a Latin-American of mixed indigenous and African ancestry

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Lay vs. Lie



'Try and' vs. 'Try to'

Origin of ZAMBO

American Spanish, black person, mulatto — more at [SAMBO](#)

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SALVAJE WILD

adjective **wild**
salvaje, silvestre, agreste,
loco, desenfrenado, feroz

savage
salvaje, feroz, cruel,
violento, rabioso, ferino

feral
salvaje, funeral

untamed
salvaje, bozal

fierce
feroz, fuerte, intenso,
violento, salvaje, furioso

noun **savage**
salvaje

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Lo mejor de trabajar en una reserva es estar en contacto con animales **salvajes**. The best thing about working on a reserve is being in contact with wild animals.

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salvaje

Definition from Wiktionary, the free dictionary

Contents

- 1 Spanish
 - 1.1 Etymology
 - 1.2 Adjective
 - 1.3 Noun
 - 1.3.1 Derived terms

Spanish

Etymology

From Catalan *salvatge*, from Late Latin **salvāticus*, alteration of Latin *silvāticus* (“wild”; literally, “of the woods”), from *silva* (“forest”, “grove”).

Adjective

salvaje *m, f (plural salvajes)*

1. wild
2. savage
3. stupid

Noun

salvaje *m, f (plural salvajes)*

1. savage

Derived terms

- salvajada
- salvajería
- salvajismo
- (*adverb*): salvajemente

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Categories: Spanish terms derived from Catalan | Spanish terms derived from Late Latin
| Spanish terms derived from Latin | Spanish lemmas | Spanish adjectives | Spanish nouns

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Miskito Sambu

From Wikipedia, the free encyclopedia

The **Miskitu** are an ethnic group of mixed cultural ancestry (African-Indigenous American) occupying a portion of the Caribbean coast of Central America (particularly on the Atlantic coasts of Honduras and Nicaragua) known as the Mosquito Coast region. Modern ethnographic terminology uses the term "Miskito", older documents, beginning with Spanish ones of the early 18th century, refer to the group as "Mosquitos Zambos".

Contents

- - 1 History
 - - 1.1 Origin
 - - 1.2 Rise to Dominance
- - 2 See also
- - 3 References

History

Origin

According to early accounts, slaves traveling on a slave ship revolted and took the ship over, but wrecked it near Cape Gracias a Dios, though they disagree on the impact the arrival of these Africans had on the local people, and how they were received. When Alexander Exquemelin, the first and earliest visitor (in c 1671) to the coast to describe the origins of the Miskito Sambu believed that the local people enslaved the Africans anew,^[1] while a slightly later account (1688) by the Sieur Raveneau de Lussan, thought that the local people received the Africans hospitably and married with them.^{[2][3]}

Sources written later still give different accounts. The bishop of Nicaragua, Benito Garret y Arlovi writing in 1711, but basing himself on reports by missionaries who worked in Nueva Segovia and Chontales as well as the testimony of an "ancient" former slave named Juan Ramón, said that the Africans violently overthrew their hosts, and intermarried with their women.^[4]

The date and circumstances of the shipwreck are also uncertain. Bishop Garret y Arlovi related that the ship wrecked in 1641, while an English buccaneer only known as M. W., writing in 1699 mentions two different dates in two different places: in one instance he places it as 50 years earlier (or 1649) while in another he places it 60 years earlier (1639), which might mean that his informants told him contradictory information, or that there were two shipwrecks.^[5]

According to Exquemelin's original account, the slaves took over the ship in a revolt and brought it to the coast, while the Spanish translation of the account, which may have had access to other sources, said the ship was carrying the slaves to "Tierra Firme" (Panama) and it wrecked on an island and the slaves swam ashore.^[6] The French translation adds that the ship was Portuguese and had the intention of carrying the slaves to Brazil, and this section may also have been influenced by other unnamed sources. Pedro de Rivera, writing in 1742 reported that the ship that was wrecked in 1650 "according to tradition" and that it was owned by^{[7][8]} "Lorenzo Gramalxo" (probably Lorenzo Gramajo, a prominent Portuguese merchant of Cartagena).

Rise to Dominance

This group of mixed ancestry were usually called 'Mosquitos Sambu' by the Spanish, while the others living more on the southern (Nicaraguan) region have been dubbed Tawira Miskito (Straight-haired Miskito) by modern scholars such as Karl Offen. Over the course of the eighteenth century, the Miskitu became dominant, and the office of king was in Zambo (¿?) hands from the first decade of the century onward.^[9]

There are a number of later stories which recount the same sequence of events, though often with different details, and different possible dates. It is possible that these accounts are of separate shipwrecks, or that the same wreck was elaborated in later accounts through oral tradition.^[10]

The Miskito Sambu were aggressive, an early report of 1699 has them waging near constant war with their neighboring indigenous groups.^[11] The Spanish reported many raids directed against their holdings beginning in 1699 and continuing through most of the 18th century. The raids often carried off slaves, for use at home or for sale to English traders from Jamaica, who sent them to the island to work. English also supplied the Miskito Sambu with muskets and military training to assist in these raids. Raiding reached as far south as Costa Rica and as far north as Yucatan.^[12]

According to the French buccaneer Raveneau de Lussan, who visited in 1688, the Zambos settled largely in the valley of the Wanks River (modern Rio Coco), and the report of the buccaneer M. W. in 1699, their settlements were concentrated in that river, and somewhat to the west along the coast of modern day Honduras almost as far as Trujillo. By the early eighteenth century, the leader of the Sambu group had the Miskito title "General." At some point in the early eighteenth century, however, the Sambus took over the title of King, and the palace that was occupied by a Miskito king, Jeremy, in 1699, was now occupied by a "mulatto," also named Jeremy in 1711. From that point on, Sambus held the title of king.

The emergence of the Miskitu gradually split the larger Miskitu group in two; although the Sambu (¿?) group was generally dominant and the most aggressive. Sambus (¿?) held the northern titles of King and General, while the original Miskitos (sometimes called Tawira) held the titles of Governor and Admiral.

See also

- Miskito people

References

- Alexander Exquemelin, *Zee-Rovers*, p. 150.

2. Alexander Esquemeling, *History of the Buccaneers of America*, (Boston, 1856), p. 176
3. Raveneau de Lussan, *Journal du voyage fait a la Mer de Sud avec les Filibustiers de l'Amerique* (Paris, 1690), p. 265 (this passages is seriously mistranslated in the English version.
4. Benito Garret y Arlovi to King, 30 November 1711 in Manuel de Peralta, ed., *Costa Rica y Costa de Mosquitos. Documentos para la historia de la jurisdicción territorial de Costa Rica y Colombia* (Paris, 1898), pp. 57-58.
5. M. W. "The Mosquito Indian and his Golden River," in Ansham Churchill, *A Collection of Voyages and Travels* (London, 1732), vol. 6, pp.289 and 293.
6. Alexandre Exquemelin, *Piratas de la America y luz à la defensa de la costa de las Indias Occidentales* (Colonia Agrippina, 1681), p. 304
7. Pedro de Rivera, "Notes by the Captain General of Guatemala Suggesting Means for the Expulsion of the Mosquitos," 30 November 1742 in Costa Rica-Panama Arbitration Documents. Documents Annexed to the Argument of Costa Rica (Rosslyn, VA, 1913) 1: 467
8. Manuel M de Peralta, ed. *Costa Rica y Costa de Mosquitos. Documentos para la historia de la jurisdicción territorial de Costa Rica y Colombia* (Paris 1898), p.
9. Karl Offen, "The Sambu and Tawira Miskitu: The Colonial Origins of Intra-Miskitu Differentiation in Eastern Nicaragua and Honduras," *Ethnohistory* 49/2 (2002): 337-40.
10. Karl Offen, "The Sambu and Tawira Miskitu: The Colonial Origins and Geography of Intra-Miskitu Differentiation in Eastern Nicaragua and Honduras" *Ethnohistory* 49/2 (2002): 340-43 (
11. W. M.. "The Mosquito Indian and his Golden River," in Ansham Churchill, *A Collection of Voyages and Travels* (London, 1732), vol. 6, p.288
12. Mary Helms, "Miskito Slaving and Culture Contact: Ethnicity and Opportunity in an Expanding Population," *Journal of Anthropological Research* 39/2 (1983): 179-97

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Categories: History of Costa Rica | Miskito | Ethnic groups in Nicaragua
African–Native American relations

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EXHIBIT 6 CANCELLATION PROCEEDING

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

Dariela Hortencia Vasquez Abadia (parent/)
Legal guardian of Dayana Giselle Abadia),)
Larry Avila (parent/legal guardian of)
Alejandro David Avila),)
Jose Miguel Feliz (parent/legal guardian)
Of Jayden Feliz) and)
Kenya Mencias (parent/legal guardian of)
Aaniyah Didier))
Petitioners)

v.)

Advanced Total Marketing Systems, Inc.)
Respondent)

Cancellation No.

For the Marks:

ZAMBOS

Registration Number: 2643142

Registration Date: October 29, 2002

ZAMBOS SALVAJES DEL
TROPICO ZAMBOS ZAMBOS
YUMMIES

Registration Number: 4811390

Registration Date: September 15,
2015

SALVAJES DEL TROPICO
ZAMBOS ZAMBOS YUMMIES

Registration Number: 4811389

Registration Date:

September 15, 2015

SALVAJES DEL TROPICO
ZAMBOS ZAMBOS YUMMIES

Registration Number: 4811388

Registration Date:

September 15, 2015

SALVAJES DEL TROPICO
ZAMBOS ZAMBOS YUMMIES

Registration Number: 4811387

Registration Date: September 15,
2015

Honorable Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Petitioner, JORGE ABADIA is the parent/legal guardian of DAYANA GISELLA ABADIA, and is an African American United States Citizen who married a Honduran Citizen who currently has Permanent Residency status here in the United States, and is a Georgia resident. He brings this petition to cancel as legal guardian of his six year old minor daughter, because he believes his daughter has been, are, and/or will be damaged by U.S. Registration Nos. 2643142, 4811390, 4811389, 4811388, 4811387 (collectively the "Registrations"), registered in the name of Advanced Total Marketing Systems, Inc., a Panamanian corporation, having a business address of Comosa Bank Building, First Floor Samuel Lewis Avenue, P.O. Box 4881 Panama 5. These registrations are applied for in international class 029 for plantain chips, fried plantain chips. Petitioner LARRY AVILA, a Venezuelan nation with Permanent Residency status here in the United States is born to Colombian nationals, whose mother is of African descent and father is of Amerindian descent, is a Florida resident and is father to two children, a son who is five years old and a daughter who is twenty one years old. He brings this petition to cancel as legal guardian to his five year old minor son ALEJANDRO DAVID AVILA, who is a United States Citizen. Petitioner JOSE MIGUEL FELIZ, is a United States citizen who was born in the Dominican Republic. He has two minor children. Petitioner JOSE MIGUEL FELIZ brings this petition on behalf of his six year old minor son JAYDEN FELIZ. Petitioner KENYA MENCINAS, a United States Citizen and single mother to a minor brings this petition to cancel as legal guardian to AANIYAH DIDIER. The aforementioned Petitioners find the marks to be offensive, and also believe they have been, are, and/or will be damaged by the Registrations. *See* Exhibit "AA".

The grounds for cancellation are as follows:

1. The term “ZAMBOS” appears in each of the above identified registrations. In the minds of a substantial portion of the general public this term is disparaging and offensive; that in the context of the marketplace it will be recognized as disparaging, derogatory, and offensive; that a substantial portion of the general public would immediately conclude, upon seeing or hearing the word ZAMBOS in the stores where the products are available for purchase, or anywhere, it is a pejorative, derogatory, denigrating, offensive, racist designation towards individuals of interracial African and Amerindian origin. *See* Exhibit “A”.
2. Four of the five registrations include the term “ZAMBOS” and the additional words “SALVAJES DE TROPICO” which enhances the offensive, disparaging, and scandalous nature of the marks. *See* Exhibit “C”.
3. “SALVAJE” may be used as an adjective or as a noun. It can be used to describe behavior or can be used to refer to a person, i.e., savage individual. “SALVAJES DE TROPICO” will likely be translated by consumers to mean “savages of the tropics”. *See* Exhibit “B”.
4. These terms depict a disparaging attitude toward interracial African and Amerindian men, women, and children which is shocking, culturally insensitive, and could appropriately be deemed immoral or scandalous in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).
5. The term was applied and incorporated into the Registrations using the literal element “Z” rather than the literal element “S”; however the difference is insignificant because the words sound the same and are understood to have the same meaning. *See* Exhibit “A”.

6. To be considered “scandalous,” a mark must be “shocking to the sense of truth, decency or propriety; disgraceful; offensive; disreputable; ... giving offense to the conscience or moral feelings; ... [or] calling out for condemnation,” in the context of the marketplace as applied to goods or services described in the application. *In re Mavety Media Group Ltd.*, 33 F.3d 1367, 1371, 31 USPQ2d 1923, 1925 (Fed. Cir. 1994); *In re Wilcher Corp.*, 40 USPQ2d 1929, 1930 (TTAB 1996). Scandalousness is determined from the standpoint of “not necessarily a majority, but a substantial composite of the general public, ... and in the context of contemporary attitudes.” *Id.*
7. Registrant’s predecessor in interest failed to translate the mark which likely permitted the mark to avoid detection by the United States Patent and Trademark Office in around 2002 for being disparaging and in violation of Section 2(a). *See* Exhibit “C”.
8. Petitioners through their undersigned attorney submit various online articles, definitions, and images that illustrate the scandalous nature of the Registrations. *See* Exhibits “A” and “B”.
9. The parents being of mixed race or having had interracial offspring believe the continued registration in light of its meaning will perpetuate a cycle of bullying, discrimination, and hate that is contrary to the public’s best interest.

Respondent has additional applications pending before the United States Patent and Trademark Office which have yet to be published for opposition. If they are permitted to proceed

to publication, Petitioners intend to initiate an opposition proceeding against those other applications and will move to consolidate that separate proceeding into this proceeding.¹

WHEREFORE, Petitioners believe that they have been, are, and/or will be damaged by said Registrations and pray that each of them be cancelled.

Date: October 20, 2015

Respectfully Submitted,
By: /Juliet Alcoba, Esq./
Juliet Alcoba, Esq.
Alcoba Law Group, P.A.
Ruben Alcoba, Esq.
Representing the Petitioners
3399 NW 72nd Avenue, Suite 211
Miami, FL 33122
Tel: (305) 362- 8118
Facsimile: (305) 436 -7429
jalcoba@miamipatents.com

¹ See Serial Nos. 86453618 and 86779673.

CERTIFICATE OF TRANSMISSION

I, Juliet Alcoba, hereby certify that the foregoing is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at <http://estta.uspto.gov/> on October 20, 2015; and mailed via Express mail to 221 Ponce de León Avenue, Suite 500 • San Juan, PR 00917 to the Registrant's listed Attorney of Record Maristella Collazo-Soto.

By: /Juliet Alcoba, Esq./
Juliet Alcoba, Esq.
Alcoba Law Group, P.A.
Ruben Alcoba, Esq.
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EXHIBIT 7 MOTION TO CONSOLIDATE PROCEEDINGS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

Advanced Total Marketing Systems, Inc.)
Petitioner)

v.)

RNJ Holdings, Corp.)
Respondent)

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Opposition No. 91224622
Application Serial No. 86423801
For the Mark:
CRUNCHY FRESH ! GEMBOS
TAJADITAS DE PLATANO CON
SAL/PLAINTAIN CHIPS WITH SALT

Honorable Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

MOTION TO CONSOLIDATE

TO THE HONORABLE BOARD:

COMES NOW RNJ Holdings, Corp. (Respondent) through its undersigned counsel, and respectfully prays and requests as follows:

1. Respondent hereby moves to consolidate this action for all purposes with the following cases: Advanced Total Marketing Systems, Inc. v. RNJ Holdings Corp., Opposition No. 9122521 and Cancellation No. 92062499 captioned Dariela Hortencia Vasquez Abadia o/b/o, Dayana Abadia, Larry Avila o/b/o Alejandro D. Avila, Jose Miguel Feliz o/b/o Jayden Feliz, Kenya Mencias o/b/o Kenya Mencias v. Advanced

Total Marketing Systems, Inc.; both actions are currently pending before the Board and are based upon similar facts and circumstances.

2. The Board may order the consolidation of cases involving common parties, marks, and questions of law or fact. *See M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1046 (TTAB 2008) (proceeding involved identical parties, identical registrations and related issues); *Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997) (both proceedings involved the same mark and virtually identical pleadings); *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, 1424 & n. 1 (TTAB 1993) (opposition and cancellation consolidated); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991) (opposition and cancellation consolidated); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1384 n.3 (TTAB 1991) (opposition and cancellation consolidated); *World Hockey Association v. Tudor Metal Products Corp.*, 185 USPQ 246, 248 (TTAB 1975) (consolidation ordered where issues were substantially the same and consolidation would be advantageous to both parties).
3. The instant proceeding along with the above identified proceedings in Paragraph 1 are represented by the same attorneys of record, involve the same marks, and involve the same products falling in IC 029 for plantain chips. All proceedings challenge the validity of the ZAMBOS trademark(s) for 1) being scandalous 2) not being used in United States Commerce, and 3) the unlikelihood of confusion with the GEMBOS trademarks which *ARE* being used in United States Commerce.
4. All proceedings present the Board with the same questions of law and revolve around the same set of operative facts.

5. All proceedings have yet to reach the discovery stage and are in their infancy. In view of the recently filed opposition proceeding 9122521, filed December 7, 2015 Respondent requests the consolidation of the proceedings to promote efficiency, avoid duplicity, and minimize the risks of inconsistent results.
6. If the Board determines consolidating the Cancellation with the Opposition proceedings would not promote savings in time, effort, and prevent duplicate expenses, Respondent respectfully requests the Opposition proceedings be consolidated and the Cancellation proceeding continue on its own.

WHEREFORE, Respondent respectfully requests the consolidation of the instant action for all purposes with Advanced Total Marketing Systems, Inc. v. RNJ Holdings Corp., Opposition No. 9122521 and Cancellation No. 92062499 captioned Dariela Hortencia Vasquez Abadia o/b/o, Dayana Abadia, Larry Avila o/b/o Alejandro D. Avila, Jose Miguel Feliz o/b/o Jayden Feliz, Kenya Mencias o/b/o Kenya Mencias v. Advanced Total Marketing Systems, Inc.

Date: December 8, 2015

Respectfully Submitted,
By: /Juliet Alcoba, Esq./
Juliet Alcoba, Esq.
Alcoba Law Group, P.A.
Ruben Alcoba, Esq.
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CERTIFICATE OF TRANSMISSION

I, Juliet Alcoba, hereby certify that the foregoing is being electronically transmitted via the Electronic System for Trademark Trials and Appeals (“ESTTA”) at <http://estta.uspto.gov/> on December 8, 2015; to the Petitioner’s listed Attorney of Record Maristella Collazo-Soto.

By: /Juliet Alcoba, Esq./
Juliet Alcoba, Esq.
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because the products upon information and belief have not been distributed in US Commerce by ATMS or its predecessor in Interest, and demands strict proof thereof. *See* Exhibit “1“ Declaration.

3. Deny junior trade dress, and admit the description submitted.
4. Applicant denies the allegations contained in Paragraph 4.
5. Applicant denies the allegations contained in Paragraph 5 alluding to copying.
6. Applicant denies the allegations contained in Paragraph 6.
7. Applicant admits ATMS is the listed owner for the word mark “ZAMBOS” for Registration No. 2643142.
8. Applicant denies the allegations in Paragraph 8 and demands strict proof thereof of use of the mark and sales of the product in US commerce of ZAMBOS by ATMS or its Predecessor in interest.
9. Applicant denies the allegations of use in US Commerce contained in Paragraph 9 and demands strict proof thereof.
10. Admit.
11. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph 11 and therefore denies same.
12. Deny.
13. Admit.
14. Deny.
15. Applicant requests this Paragraph be stricken for being unclear and making it impossible to respond to. Applicant denies the allegations contained in Paragraph 15.
16. Deny.

17. Applicant is without sufficient knowledge to form a belief as to the allegations of use in US Commerce contained in Paragraph 17, and therefore denies same, and demands strict proof thereof.
18. Admit Respondent's registration is for plantain chips.
19. Deny and demand strict proof thereof.
20. Deny and demand strict proof thereof.
21. Deny and demand strict proof thereof.
22. Deny and demand strict proof thereof.
23. Deny.
24. Deny.

AFFIRMATIVE DEFENSES

1. Petitioner's claims are barred because Petitioner has unclean hands on the basis of its rampant misuse of the Registration symbol for both DEL RANCHO and YUMMIES.¹ Petitioner's intent to deceive the public should serve as a bar to the relief requested.
2. Petitioner's claims are barred because it has fraudulently maintained its registrations by filing papers with the Patent and Trademark Office, specifically specimens of products bearing the marks asserting the mark is used with plantain chips, when in fact, the mark, upon information and belief, is not sold in US commerce by Petitioner or any of its predecessors in interest.
3. Petitioner's claims are barred because it has abandoned any of its alleged rights for failure to use the mark in US commerce.

¹ See Exhibits "2" and "3" Del Rancho and Yummies Registrations.

4. Petitioner's claims are barred because it deceived the USPTO into issuing multiple registrations by failing to include the proper translations of the words sought to be registered. The words "ZAMBOS" and "SALVAJES DE TROPICO" alone and used in conjunction are derogatory and culturally insensitive.² For this reason, the Registrations are being attacked in a separate cancellation proceeding for being invalid and in violation of the Lanham Act, 15 U.S.C. § 1052(a).³
5. Petitioner's claims regarding likelihood of confusion based upon trade dress are barred because the elements identified on the product packaging are functional.
6. Petitioner's claims regarding likelihood of confusion based upon trade dress are barred because the marks lack secondary meaning.
7. Petitioner's claims regarding likelihood of confusion are barred because the marks have different commercial impressions and do not have similar meanings.
8. Registrant raises the laches defense and asserts Petitioner's claims are barred because Petitioner failed to object to Registrant's prior registration for GEMBOS, Registration No. 4694971 which issued March 3, 2015 and is used for substantially the same goods which is incorporated into this registration.
9. Petitioner's claims regarding likelihood of confusion are baseless because Registrant's application which was filed earlier than Petitioner's later filed applications which became Registrations, were not cited by the examining attorney against Petitioner's later filed applications.

² See Exhibit "5" Definitions.

³ Applicant's undersigned counsel submitted a Motion to Consolidate various proceedings pending before the TTAB to promote efficiency, reduce costs, and enable the Board to make a consistent ruling because 1) the same marks are being challenged and 2) the same attorneys of record are involved. See Exhibits "6" and "7" Cancellation and Motion to Consolidate. The parties are awaiting a determination by the Board regarding the outstanding motions.

10. Petitioner's claims should be barred because of their continued efforts to mislead and deceive the United States Patent and Trademark Office. Petitioner presented trademark applications alleging they have an intention to use DEL RANCHO with YUMMIES in commerce⁴ which is contradicted by Opposer's own submission of product packaging in its Notice of Opposition⁵ alleging products are distributed in US commerce while also boasting that DEL RANCHO and YUMMIES are federally registered trademarks owned by Petitioner.

Date: March 16, 2016

Respectfully Submitted,
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⁴ These Del Rancho Applications received office actions for likelihood of confusion.

⁵ See Exhibit 4.

CERTIFICATE OF TRANSMISSION

I, Juliet Alcoba, hereby certify that the foregoing is being electronically transmitted via the Electronic System for Trademark Trials and Appeals (“ESTTA”) at <http://estta.uspto.gov/> on March 16, 2016; to the Petitioner’s listed Attorney of Record Maristella Collazo-Soto.

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